

**Renco Electronics, Inc. and Local 888, United Food and Commercial Workers Union, AFL-CIO, CLC, Petitioner.** Case 29-RC-8705

December 23, 1999

**SUPPLEMENTAL DECISION AND DIRECTION OF THIRD ELECTION**

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered objections to a second election held on June 27, 1997, and the hearing officer's report recommending disposition of them.<sup>1</sup> The election was held pursuant to a Decision and Direction of Second Election issued by the Board on May 30, 1997. The tally of ballots shows 108 for and 100 against the Petitioner, with 6 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's recommendations only to the extent consistent with this Decision.

The hearing officer credited the testimony of employee Anrise Theodore that, as she was standing in line waiting to vote, Board interpreter Ronald Derisca asked her, "Do you know where to put your yes vote?" Notwithstanding Derisca's emphasis on the "yes" choice on the ballot, the hearing officer concluded that Derisca's conduct was neither destructive of the Board's standard of impartiality nor could reasonably be said to have affected any votes.<sup>2</sup> We disagree.

It is well settled that the Board's role in representation elections is to ascertain the employees' wishes concerning unionization, and not to influence that fundamental choice.<sup>3</sup> Board interpreters, like Board agents, act on behalf of the Board and must endeavor to maintain and protect the neutrality of the Board's election procedures.<sup>4</sup>

<sup>1</sup> In the underlying case, *Renco Electronics, Inc.*, 325 NLRB 1196 (1998), the Board remanded to the Regional Director, for the purpose of conducting a hearing, that portion of the Employer's Objection 2 embodied in testimony of the third, fourth, and fifth witnesses proffered by the Employer in its July 18, 1997 letter to the Regional Director. The Board found that this additional evidence was sufficiently related to the issue of Board agent conduct timely raised by the Employer in its original objections and raised substantial and material issues warranting a hearing. The hearing was held on September 1, 1998.

<sup>2</sup> *Athbro Engineering Corp.*, 166 NLRB 966 (1967), and *Glacier Packing Co.*, 210 NLRB 571 (1974).

<sup>3</sup> *General Shoe Corp.*, 77 NLRB 124 (1948). ("In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of employees. It is our duty to establish those conditions; it is also our duty to determine whether they have been fulfilled. When, in the rare extreme case, the standard drops too low, because of our fault or that of others the requisite laboratory conditions are not present and the experiment must be conducted over again.")

<sup>4</sup> In judging the conduct of a Board interpreter, the appropriate standard is that used to evaluate the conduct of a Board agent. *Renco Electronics*, 325 NLRB 1196 (1998).

Because Derisca's "yes vote" comment was couched within his generalized instructions regarding voting procedure, we find that employees who overheard the comment could reasonably believe that Derisca spoke for the Board and infer from his remark that the Board favored a "yes" vote. We further find that since this preference was heard by employees waiting in line to vote, there was sufficient evidence of dissemination, given the closeness of the election, to establish that the conduct may have affected the outcome of the election.<sup>5</sup>

We also find that the instant case is distinguishable from those cases cited by the hearing officer in which the Board has upheld election results despite questionable comments by Board agents. In *Wabash Transformer Corp.*, 205 NLRB 148 (1973), aff'd. 509 F.2d 647 (8th Cir. 1975), cert. denied 423 U.S. 827 (1975), the Board found that a Board agent's announcement on opening the polls, that employees could "now vote for your union representative" was not a basis for setting aside the election. Noting that the announcement's emphasis on the right to vote for the union implicitly contained the concomitant right to vote against the union, the Board agreed with the Regional Director that, in view of the statements with respect to the Board's neutrality in the preelection notices and the employer's campaign literature, the announcement was not per se violative of the Board's standards or prejudicial to employees' rights. In *Newport News Shipbuilding*, 239 NLRB 82 (1978), the Board agent, in demonstrating voting procedure to a group of voters, mimed an "x" motion over the "yes" box on the ballot, while concurrently stating that they should mark the box of their choice. The Board agreed with the Regional Director that simultaneously instructing employees to mark the box of their choice offset the effects of the Board agent's gesture. In contrast to *Wabash* and *Newport News*, Derisca, as part of the routine instructions given by Board agents to voters, specifically asked Theodore if she knew where to put her "yes" vote and Derisca made no other qualifying statement to neutralize the reasonable inference created by his statement, namely, that the Board favored the Petitioner.

The Board's role in conducting elections must not be open to question. We conclude, based on the totality of the circumstances, that Derisca's comment jeopardized the Board's neutrality and may have had an impact on the results of the election. Accordingly, we find that the election must be set aside and a new election held.<sup>6</sup>

[Direction of Third Election omitted from publication.]

<sup>5</sup> The hearing officer inferred, from Derisca's instructions to Theodore, that Derisca gave similarly truncated instructions, without reference to the "no" box, to the other employees.

<sup>6</sup> Since we are setting aside the election based on Derisca's comment we find it unnecessary to pass on the hearing officer's findings as to the other allegations of objectionable conduct.